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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FILED

FEB 27 2008

RICHARD W. WILSON
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AN DUY NGUYEN,

PETITIONER,

C 07-3979 SI (PR)

V.

MIKE EVANS, WARDEN,
RESPONDENT.

I THE PETITIONER AN DUY NGUYEN AM
ANSWERING THE RESPONDENT MEMORANDUM
OF POINTS AND AUTHORITIES.

FIRST OFF YOUR HONOR I AM NOT A LAWYER I
HAVE NEVER STUDY LAW. BUT THE COURT TOLD
ME THAT I COULD DO THIS MYSELF WITHOUT
THE HELP OF A LAWYER AND SO YOUR HONOR PLEASE
BEAR WITH ME BECAUSE ALL I AM ASKING HERE
IS FOR "JUSTICE"
ON DECEMBER 1, 2004 I WAS CONVICTED BY A JURY FOR
SECOND DEGREE MURDER. YOUR HONOR SOMETHING IS
VERY WRONG HERE. THIS SECOND DEGREE MURDER



1 That I WAS CONVICTED for is wrong honor.
2 If you will your honor in the Respondent
3 MEMORANDUM OF POINTS AND AUTHORITIES IN
4 SUPPORT OF ANSWER TO PETITION FOR WRIT OF
5 HABEAS CORPUS. page 5 LINE 17 AND THIS IS
6 STATEMENT OF FACTS. That there WAS A MELEE
7 AND THE PROSECUTION'S CASE page 9 LINE 13
8 THE PROSECUTION'S WITNESSES ALSO SAID THAT
9 THIS WAS A "ALTERCATION" AND ON THIS SAME
10 PAGE LINE 17 AND 18 THE WAITRESS THAT WORK
11 IN THE CAFE MADE A STATEMENT TO THE POLICE
12 THAT A "FIGHT BROKE OUT" AND ON PAGE 10
13 LINES 2 AND 3 THE PROSECUTION'S STAR WITNESS
14 ALSO STATE. BAO TESTIFIED THAT A "FIGHT BROKE
15 OUT" YOUR HONOR I ASK THE COURT JUST ON
16 THE PROSECUTION'S CASE ALONE!! THE PETITIONER
17 ASK THE COURT ON IT'S OWN TO THROW OUT
18 THE SECOND DEGREE MURDER CONVICTION AGAINST
19 THE PETITIONER!! THERE IS NO SECOND DEGREE
20 MURDER HERE. THERE IS ONLY A FIGHT THAT
21 WENT VERY WRONG BETWEEN SOME YOUNG PUNKS
22 THE PROSECUTION'S CASE PAGE 9 LINES 10, 11, THE
23 PROSECUTION STATE THAT THERE WAS A RIVALRY
24 BETWEEN VG AND ASIAN WARRIORS WHICH MEAN
25 THAT BOTH GROUPS ARE ALWAYS TRYING TO HURT EACH
26 OTHER. WHICH MEANS THAT WE ARE ALL GUILTY!!
27 I THE PETITIONER DID NOT GO IN THE CAFE TO KILL!!



(3)

1 Your Honor the state APPELLATE COURT
2 DID UNREASONABLY REJECTED THE PETITIONER
3 CLAIM THAT THE TRIAL COURT AND THE
4 PROSECUTOR Vouched FOR THE CREDIBILITY
5 OF THE WITNESS BAO TRAN. AND ALSO THE
6 PETITIONER WAS DEPRIVED OF THE EFFECTIVE
7 ASSISTANCE OF COUNSEL AT THE TRIAL
8 WHEN my trial attorney failed to object
9 TO THE prosecution's Improper Vouching
10 For it's own witness.

11 PAGE 13 LINE 6 BAO NEGOTIATED A guilty plea to
12 BEING AN ACCESSORY AFTER THE FACT.

13 LINES 7, 8, tell us the plea bargain obligations
14 Which was to testify honestly and truthfully for
15 THE PEOPLE AND ACCEPT A REINSTATEMENT OF THE
16 MURDER CHARGE if the trial court found that he
17 Did not fulfill the plea bargain obligations.

18 Your Honor UNDER BRIAN A. BUCKLEY .V. C.A. TERHUNE
19 NO. 03-55045 - UNITED STATES COURT OF APPEALS
20 FOR THE NINTH CIRCUIT, 441 F.3d 688; 2006 U.S.
21 LEXIS 6612.

22 THE PROSECUTION AND THE COURT MADE A
23 PLEA AGREEMENT WITH BAO THE PROSECUTION'S
24 WITNESS, THAT PLEA AGREEMENT HERE IN
25 CALIFORNIA IS A FORM OF CONTRACT AND ACCORDING
26 TO THE SAME RULES AS OTHER CONTRACTS. THUS UNDER
27 ADAMSON, CALIFORNIA COURTS ARE REQUIRED TO CONSTUE



(4)

1 AND INTERPRET PLEA AGREEMENTS IN ACCORDANCE
2 WITH STATE CONTRACT LAW.
3 YOUR HONOR THE SAME PAGE 13 FACTUAL BACKGROUND
4 LINES 10 TO 17 THE PROSECUTION'S WITNESS BAO
5 BREACHED THE PLEA AGREEMENTS WHICH IS THE
6 SAME AS A CONTRACT WHEN BAO STARTED TO
7 TELL "LIES" LINES 10 TO 17. DENYING RECOLLECTION
8 SAYING HE DON'T RECALL AND DON'T REMEMBER.
9 THE PLEA AGREEMENTS WAS TO TESTIFY HONESTLY
10 AND TRUTHFULLY, WHICH BAO DID NOT DO SO.
11 SO THE PLEA AGREEMENTS CONTRACT WAS -
12 BREACHED AND YES YOUR HONOR THE PROSECUTION
13 DID IMPROPERLY VOUCHING FOR IT'S OWN WITNESS."
14 LINES 18 TO 20 THE PROSECUTION STARTED THREATEN
15 THEIR WITNESS. "ON" LINES 16 TO 20 THE PROSECUTION
16 STARTED THREATEN BAO. ONCE THE PLEA AGREEMENTS
17 OR BREACHED WHICH THE ~~WITNESS~~ WITNESS BAO
18 STARTED TELLING LIES. LINE 16. I DO WANT TO REMIND
19 YOU THAT I AM THE ONE THAT WILL BE DECIDING WHAT
20 YOUR SENTENCE IS TO BE AND THE REST OF WHAT THE
21 PROSECUTION TOLD BAO WAS A THREAT PUT IN A WAY
22 THAT BAO KNEW WHAT WOULD HAPPEN. HE, BAO
23 WOULD BE CHARGE WITH MURDER IF HE, BAO DID
24 NOT SAY WHAT HE, BAO MADE A PLEA AGREEMENTS
25 TO SAY. SO LATER WHEN THE PROSECUTION ARGUED TO
26 THE JURY AND WAS VOUCHING FOR THE WITNESS. IT
27 WAS IMPROPER VOUCHING BECAUSE THE PROSECUTOR



1 WAS TELLING THE JURY WHAT THE WITNESS SAY
2 PAGE 13 LINES 22 TO 25, WHAT THE PROSECUTOR
3 WAS VOUCHING FOR WAS MORE LIES. YOUR
4 HONOR THE RESPONDENT WANT YOU TO BELIEVE
5 THAT AFTER THE PROSECUTION THREATEN BAO
6 THAT HE BETTER TELL THE TRUTH OR THEY THE
7 PROSECUTION WOULD CHARGE BAO WITH MURDER
8 AND BAO SEEN THE LIGHT AND STARTED TELLING
9 THE TRUTH. YOUR HONOR BAO STARTED OUT
10 TELLING LIES AND KEPT TELLING LIES BUT, THE
11 LIES THE PROSECUTION WANTED TO HEAR.
12 YOUR HONOR JUST BY THESE FACTS I JUST
13 STATED THE PROSECUTION WAS IMPROPER
14 VOUCHING FOR "BAO"
15 ALSO YOUR HONOR WHEN MY TRIAL ATTORNEY DID NOT
16 OBJECT TO THE IMPROPER VOUCHING BY THE PROSECUTION
17 AND MY TRIAL ATTORNEY DID NOT OBJECT TO THE TRIAL
18 COURT ERROR BY OMITTING TO INSTRUCT THE JURY ON THE
19 LESSER AND INCLUDED OFFENSE OF VOLUNTARY MANSLAUGH-
20 TER. THIS ACT BY MY TRIAL ATTORNEY WAS A ACT OF
21 INEFFECTIVE ASSISTANCE OF COUNSEL AND ALSO
22 BY THE APPELLATE ATTORNEY FAIL TO ARGUE TO THE
23 COURT OF APPEAL THAT THE TRIAL COURT HAD ERRED BY
24 OMITTING TO INSTRUCT THE JURY ON THE LESSER AND
25 INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER AND THE
26 IMPROPER VOUCHING, THIS WAS INEFFECTIVE ASSISTANCE OF
27 COUNSEL BY THE APPELLATE ATTORNEY AND FOR THE



1 ABOVE STATED FACTS OF IMPROPER VOUCHING
 2 AND INEFFECTIVE ASSISTANCE OF COUNSEL
 3 IN VIOLATION OF MY CONSTITUTIONAL RIGHTS
 4 AND THESE ACTS DENY ME A FAIR TRIAL.
 5 I ASK THE COURT FOR THESE REASON ALONE
 6 THAT THIS MURDER CONVICTION BE OVERTURN,
 7 REVERSED.

8
 9 MEMORANDUM OF POINTS AND AUTHORITIES

10 BRIAN A. BUCKLEY V. C.A. TERHUNE. NO. 03-55045 -
 11 UNITED STATES COURTS OF APPEALS - FOR THE NINTH
 12 CIRCUIT, 441 F.3d 688. 2006 U.S. LEXIS 6612
 13 A plea agreements is the same as a contract and
 14 ON PAGE 13 LINES 10 to 17 WHEN THE WITNESS STARTED
 15 TELLING "LIES" THE CONTRACT WAS BREACHED AND SO
 16 THE PROSECUTION WAS VOUCHING FOR A "LIAR" AND SO
 17 THAT IS IMPROPERLY VOUCHING FOR IT'S OWN WITNESS. //
 18 IMPERMISSIBLE VOUCHING MAY OCCUR WHERE THE PROSECUTOR
 19 PLACES THE PRESTIGE OF THE GOVERNMENT BEHIND A
 20 WITNESS. PEOPLE V. WILLIAMS (1997) 16 CAL. 4TH 153, 257
 21 ON PAGE 13 LINES 22 TO 25 THE PROSECUTOR ARGUED TO
 22 THE JURY THAT BAO WAS TELLING THE TRUTH AND THAT
 23 PLACES THE PRESTIGE OF THE GOVERNMENT BEHIND BAO.
 24 THE PROSECUTOR WAS NOT PLACING ASSURANCES, BASED ON
 25 THE RECORD, REGARDING THE APPARENT HONESTY OR RELIABILITY
 26 OF PROSECUTION WITNESS. THIS WAS NOT THE CASE YOUR
 27 HONOR, BEFORE PROSECUTOR WAS VOUCHING FOR BAO



1 PAGE 13 LINES 10 TO 17 THE WITNESS WAS TELLING LIES
 2 PEOPLE.V. FRYE (1998) 18 CAL. 4TH 894, THERE WAS NO
 3 ERROR IN PROSECUTOR'S RECOUNTING THE NATURE OF THE
 4 PROSECUTION'S AGREEMENT WITH A WITNESS AS AN AID
 5 TO THE JURY'S EVALUATION OF HIS CREDIBILITY.
 6 YOUR HONOR THIS IS NOT THE CASE. THE PROSECUTOR
 7 WAS RECOUNTING THE NATURE OF THE PLEA AGREEMENT
 8 TO THE WITNESS BAO AS A THREAT LETTING BAO
 9 THE WITNESS KNOW THAT IF HE DID NOT START
 10 TO SAY WHAT THE PROSECUTOR WANTED HIM TO SAY
 11 THE PROSECUTOR WOULD CHARGE BAO WITH MURDER

12 PAGE 13 LINES 17 TO 20

13 UNITED STATES.V. YOUNG, 470 U.S. 1, 18-19 (1985)

14 PROSECUTORIAL COMMENTS MAY VIOLATE DUE PROCESS IF
 15 THEY CONVEY TO THE JURY THAT IT IS PERMITTED (b)
 16 TO RELY ON THE GOVERNMENT'S VIEW OF THE -
 17 EVIDENCE. ON PAGE 13 LINES 22 TO 25 THE PROSECUTOR
 18 IS TELLING THE JURY THAT BECAUSE BAO MADE A
 19 PLEA AGREEMENT HE IS TELLING THE TRUTH AND NOTHING
 20 BUT THE TRUTH SO THE PROSECUTOR IS TELLING THE
 21 JURY TO RELY ON THE GOVERNMENT'S VIEW OF THE
 22 EVIDENCE AND TO FORGET ABOUT THE LIES BAO
 23 WAS TELLING ON LINES 12 TO 20

24 UNITED STATES.V. CREAMER, 555 F. 2D 612, 617-18
 25 (7TH CIR. 1977) PERMISSIBLE TO PUT BEFORE THE JURY
 26 BOTH THE WITNESS'S UNDERSTANDING OF HIS PLEA AGREEMENT
 27 AND WHAT WOULD HAPPEN IF WITNESS VIOLATED IT.



(8)

1 The prosecutor apply the plea agreement and
2 what would happen if he BAO violated it
3 Before the jury is when BAO was telling
4 lies already and had already violated his
5 plea agreement's page 13 lines 10 to 20.
6 BAO is not being truthful that's when the
7 prosecutor bring up the plea agreement!!
8 By representing to the jury that the prosecution
9 had only asked BAO TRAN to tell the truth "after"
10 BAO had already lie the prosecution and the court
11 itself improperly suggested to the jury to forget
12 about BAO telling lies and that the prosecution and
13 the court had made BAO tell the truth because
14 of a plea agreement such a suggestion to the jury
15 directly involves the prosecution in the improper
16 and unethical practice of vouching for its own -
17 witnesses. (see, e.g., United States v. NECOECHEA -
18 9th Cir. 1992) 986 F.2d 1273, citing United States
19 v. Shaw (9th Cir. 1987) 829 F.2d 714, 716-18, cert.
20 denied, 485 U.S. 1022 (1988) such representations
21 or implications are a way of improperly placing the
22 prestige of both law enforcement and the court
23 behind the witness.
24 United States v. Smith (9th Cir. 1992) 962 F.2d 923
25 where the prosecutor committed improper vouching
26 when he assured the jury in closing argument that
27 his job was to turn over favorable evidence to the



1 DEFENSE AND TO LEAD THE JURY TO THE TRUTH AND THAT
2 IF HE DID ANYTHING WRONG IN THE TRIAL HE WOULD BE
3 REMOVED BY THE COURT.

4 UNITED STATES V. NECOECHEA, SUPRA, 986 F.2d 1273
5 AT P. 1278) VOUCHING IS ESPECIALLY PROBLEMATIC
6 IN CASES WHERE THE CREDIBILITY OF WITNESSES IS
7 CRUCIAL, AND HAS OFTEN REQUIRED REVERSAL IN THAT
8 CIRCUMSTANCE. BAO WAS THE PROSECUTOR STAR
9 WITNESS!

10 PEOPLE V. MEZA (1981) 116 CAL. APP. 3d 988, 998.)
11 IT IS WELL ESTABLISHED THAT A DEFENDANT IS DENIED
12 A FAIR TRIAL IF THE PROSECUTION'S CASE DEPENDS
13 SUBSTANTIALLY ON TESTIMONY SECURED THROUGH AN
14 IMMUNITY AGREEMENT WHICH PLACES THE WITNESS UNDER
15 A STRONG COMPULSION TO TESTIFY IN A PARTICULAR
16 FASHION.

17 PEOPLE V. MEDINA (1974) 41 CAL. APP. 3d 438, 455-456.)
18 THE CALIFORNIA SUPREME COURT HAS RECENTLY REAFFIRMED THIS
19 PRINCIPLE, HOLDING THAT IF AN ACCOMPLICE IS GRANTED IMMUNITY
20 SUBJECT TO THE CONDITION THAT HIS TESTIMONY SUBSTANTIALLY
21 CONFORM TO AN EARLIER STATEMENT GIVEN TO POLICE, THE
22 ACCOMPLICE'S TESTIMONY IS "TAINTED BEYOND REDEMPTION"
23 AND ITS ADMISSION DENIES THE DEFENDANT A FAIR TRIAL
24 PEOPLE V. FIELDS (1983) 35 CAL. 3d 329 THIS COURT EXPLAINED
25 THAT THE REQUIREMENTS OF DUE PROCESS ARE MET IF THE
26 PROSECUTION'S AGREEMENT WITH THE WITNESS PERMITS THE
27 WITNESS TO "TESTIFY FREELY" AT TRIAL AND TO RESPOND TO ANY

(10)

1 claim that he breached the agreement by showing
2 that the testimony he gave was a "full and truthful"
3 account!

4 Due process was violated here the witness BAO
5 WAS NOT ALLOW TO "TESTIFY FREELY" ONCE AGAIN PAGE
6 13 LINES 10 TO 20 THE PROSECUTOR HAD TO TELL BAO
7 HOW TO TESTIFY OR IF NOT BAO WOULD HAVE ANSWERED,
8 EVERY QUESTIONS WITH "I DON'T RECALL" OR "I DON'T REMEMBER"
9 AND THE PROSECUTOR NEVER ASK BAO WAS HE TELLING
10 THE TRUTH BECAUSE THE PROSECUTOR KNEW BAO WAS
11 TELLING "LIES" SO THE PROSECUTOR TOLD BAO TO DO YOUR
12 BEST TO TELL THE TRUTH, WHICH IS JUST LIKE SAYING
13 JUST MAKE IT A BELIEVABLE LIE.

14 PEOPLE V. DESANTIS (1992) 2 CAL. 4TH 1198-1219-1220
15 AGREEMENT REQUIRING ONLY TRUTHFUL TESTIMONY IS
16 ACCEPTABLE.

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(11)

1 THE STATE APPELLATE COURT DID ERROR
 2 IN REJECTING THE CLAIMS THAT PROSECUTOR
 3 COMMITTED MISCONDUCT IN CLOSING ARGUMENT

4 THE PROSECUTOR DID DENY PETITIONER A FAIR TRIAL
 5 BY MAKING MISSTATEMENTS OF THE LAW AND OTHER
 6 ACTS OF MISCONDUCT IN HIS ARGUMENTS TO THE JURY.

7 THE PROSECUTOR'S FOURTH STATEMENT PAGE 22
 8 LINES 15 TO 20 THE PROSECUTOR PLAYS A MIND
 9 READER IN COURT WHEN THE PROSECUTOR ARGUE
 10 THAT SELF-DEFENSE ALL DEALS WITH WHAT'S IN THE
 11 DEFENDANT'S MIND THE PROSECUTOR DO NOT KNOW WHAT
 12 WAS ON THE DEFENDANT'S MIND AT THE TIME OF THE
 13 SO CALL MURDER. BUT LET'S GO WITH WHAT THE -
 14 PROSECUTOR SAY AND SAY THAT THE PROSECUTOR
 15 DID KNOW WHAT WAS ON THE DEFENDANT'S MIND
 16 AT THE TIME OF THE CRIME. AND SO WE WILL YOUR
 17 HONOR GO WITH LINE 18 AND 19 WHAT'S SO IMPORTANT
 18 FOR SELF-DEFENSE IS WHAT'S IN THE DEFENDANT'S MIND!

19 PAGE 7 LINE 14 PETITIONER SAID HE WAS REACTING IN FEAR
 20 WHEN HE STABBED VU IN THE CHEST. FEAR WAS IN THE
 21 PETITIONER MIND. PAGE 11 LINES 7 TO 9 PETITIONER NEVER
 22 INTENDED TO KILL VU, IN THE PETITIONER MIND HE THOUGHT
 23 HE WAS BEING ATTACKED AND THAT HIS LIFE WAS IN
 24 JEOPARDY THIS WAS WHAT WAS ON THE PETITIONER
 25 MIND. AND ONCE AGAIN WE GO BACK TO PAGE 22 LINES
 26 18 AND 19 WHAT'S SO IMPORTANT FOR SELF-DEFENSE IS WHAT'S
 27 IN THE DEFENDANT'S MIND AND IN THIS CASE THE



1 defendant testified!
 2 PAGE 22 LINES 15 to 17 The prosecutor remarks
 3 OR IT'S NOT WHAT'S ON THE VIDEOTAPE "SO I ASK
 4 THE COURT TO PUT TO THE SIDE AND NOT USE
 5 THE STATEMENT OF FACTS AND THE FATAL ALTERCATION
 6 AS SHOWN ON THE VIDEOTAPE PAGE 2, 3, 4, 5, 6, AND
 7 PAGE 7 LINES 1 TO 7 BECAUSE AS THE PROSECUTOR SAY
 8 IT'S NOT WHAT'S ON THE VIDEOTAPE, "IT'S WHAT'S IN THE
 9 DEFENDANT'S MIND"
 10 PAGE 18 LINES 22 to 24 THE PROSECUTOR SAY THAT THE
 11 DEFENDANT IS GUILTY OF MURDER, UNLESS THERE EVIDENCE
 12 TO PROVE THAT SOMETHING MITIGATES IT DOWN TO A -
 13 VOLUNTARY MANSLAUGHTER. THE PROSECUTOR IS TELLING
 14 THE JURY THAT THE DEFENDANT MUST PROVE THAT
 15 THIS IS A MANSLAUGHTER WHEN BY LAW THAT'S
 16 THE PROSECUTOR JOB IS TO PROVE THE CRIME,!!
 17 AND THERE IS REASONABLE LIKELIHOOD THAT THE JURY TOOK
 18 THE ASSAILED REMARKS OUT OF CONTEXT!
 19 PAGE 20 LINES 11, TO 12 THE PROSECUTOR MISSTATED THE LAW
 20 WHEN THE PROSECUTOR SAID NOW A VOLUNTARY MANSLAUGHTER
 21 IS BASICALLY THE MURDER OF A HUMAN BEING WITH THE INTENT
 22 TO KILL! THESE REMARKS BY THE PROSECUTOR TOOK ANY
 23 CHANCE THAT I HAD FOR VOLUNTARY MANSLAUGHTER AWAY
 24 FROM ME, THE PROSECUTOR LIE TO THE JURY THAT THERE
 25 IS INTENT TO KILL IN A VOLUNTARY MANSLAUGHTER. THE
 26 PROSECUTOR WAS TELLING THE JURY THAT A VOLUNTARY MANSLAUGH-
 27 TER - IS THE SAME AS ANY OTHER MURDER, WITH INTENT TO

1 Kill! The jury did take this statement out of (13)
 2 context and I was found guilty of second degree
 3 murder.

4 Page 24 Lines 7 to 11 the prosecutor remarks
 5 did help to convict the defendant!
 6 The prosecutor is telling the jury to come together
 7 as a community and take charge and stand up to
 8 the gang members! the prosecutor is telling the
 9 jury to give the Vu Pham's family justice, and this
 10 means to retaliate against the defendant! and your
 11 honor I want you to think what was in the jurors
 12 mind when Vu Pham's family or sitting there crying
 13 for the dead son! the jury would think it's the right
 14 thing to do is to reach out and help Vu Pham's family
 15 and to find the defendant guilty of murder all
 16 because of the remarks of the prosecutor!
 17 The prosecutor is not talking about evidence -
 18 here the prosecutor is appealing to the jurors
 19 heart and mind!!

20 United States v. Monaghan (D.C. Cir. 1984) 741 F.2d 1434
 21 At p. 1441, It is generally inappropriate for a prosecutor to
 22 ask jurors to step outside their role as objective fact
 23 finders! the evil lurking in such prosecutorial appeals is
 24 that the defendant will be convicted for reasons wholly
 25 irrelevant to his own guilt or innocence. Jurors may be persua-
 26 ded by such appeals to believe that by convicting a defendant, they
 27 will assist in the solution of some pressing social problem!



(14)

1 THE STATE APPELLATE COURT DID ERROR
 2 WHEN IT REJECTED THE CLAIM THAT DEFENSE
 3 COUNSEL'S FAILURE TO OBJECT THE ASSERTED
 4 INSTANCES OF PROSECUTORIAL MISCONDUCT
 5 DEPRIVED PETITIONER OF EFFECTIVE -
 6 ASSISTANCE OF COUNSEL!

7 PETITIONER WAS DEPRIVED OF EFFECTIVE ASSISTANCE
 8 OF COUNSEL, BOTH AT HIS TRIAL AND IN HIS
 9 DIRECT APPEAL. BY BOTH TRIAL COUNSEL AND
 10 APPELLATE COUNSEL FAILED ARGUE TO THE COURT
 11 APPEAL ABOUT THE MANY ACTS OF MISCONDUCT
 12 BY THE PROSECUTOR AND THE TRIAL COUNSEL
 13 FAILED TO OBJECT TO THE MANY ACTS OF -
 14 MISCONDUCT AT TRIAL WHICH I HAVE ALREADY
 15 STATED ABOVE DUE TO THESE FACTS I WAS DENY
 16 A FAIR TRIAL.

17 PEOPLE.V. SIMPSON (1954) 43 CAL. 2D 552,

18 SULLIVAN.V. LOUISIANA (1993) 508 U.S. 275. 124 L. Ed. 2d
 19 182. 113 S. CT. 2078. 2081-82

20 PEOPLE.V. BROPHY (1954) 122 CAL. APP. 2D 638, 647.

21 PEOPLE.V. SHOEMAKE (1982) 135 CAL. APP. 3D 442
 22 446.

23 PEOPLE.V. SMITH (1967) 249 CAL. APP. 2D 395, 404]

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1 THE STATE APPELLATE COURT DID ERROR WHEN
 2 IT REJECT PETTIONER'S CLAM THAT IMPROPER
 3 PINPOINT INSTRUCTIONS VIOLATED DUE ~~PROCESS~~ PROCESS
 4 AND ALSO THE COURT ERROR WHEN IT REJECT
 5 PETTIONER CLAM THAT THE APPELLATE ATTORNEY
 6 ~~REJECTED~~ FAILED TO ARGUE TO THE COURT
 7 OF APPEAL THAT THE TRIAL COURT ERRED IN
 8 FAILING TO ALLOW PETTIONER'S JURY TO
 9 CONSIDER A VERDICT OF INVOLUNTARY -
 10 MANSLAUGHTER.

11 IMPROPER PINPOINT INSTRUCTIONS CALJIC NOS. 2.03
 12 2.06 AND 2.52 VIOLATED PETTIONER DUE PROCESS
 13 PEOPLE V. MOORE (1954) 43 CAL. 2D 517, 526-527
 14 REAGAN V. UNITED STATES (1895) 157 U.S. 301, 310
 15 WARD V. OREGON (1973) 412 U.S. 470.
 16

17 A TRIAL COURT MUST INSTRUCT THE JURY ON EVERY -
 18 THEORY OF THE CASE WHICH IS SUPPORTED BY
 19 SUBSTANTIAL EVIDENCE (PEOPLE V. EDWARDS (1985) 39
 20 CAL. 3D 107, 116. PEOPLE V. GEIGER (1984) 35 CAL. 3D 510
 21 519; PEOPLE V. FLANNEL (1979) 25 CAL. 3D 668-684.
 22 WHERE THE THEORY IS THAT THE DEFENDANT
 23 COMMITTED A LESSER INCLUDED OFFENSE, THE COURT
 24 MUST INSTRUCT ON THE LESSER INCLUDED OFFENSE WHEN
 25 THERE IS EVIDENCE FROM WHICH A JURY COMPOSED
 26 OF REASONABLE PERSON COULD CONCLUDE THE DEFENDANT
 27 WAS GUILTY OF THE LESSER CRIME



1 PEOPLE.V. WICKERSHAM (1982) 32 Cal. 3d 307, 305
2 PEOPLE.V. FLANNEL, SUPRA. 25 Cal. 3d at p. 684
3 PEOPLE.V. BARTON (1995) 12 Cal. 4th 186
4 PEOPLE.V. CARMEN (1951) 36 Cal. 2d 768, 773
5 IN 2000, THIS COURT HELD THAT VOLUNTARY -
6 MANSLAUGHTER CAN EXIST EVEN IF A KILLING IS
7 UNINTENTIONAL. PEOPLE.V. LASKO (2000) 23 Cal.
8 4th 101, 107-110;

9 PEOPLE.V. BLAKELEY (2000) 23 Cal. 4th 82, 87-91
10 PEOPLE.V. BLAKELEY, SUPRA. 23 Cal. 4th at p. 85
11 INVOLUNTARY MANSLAUGHTER, IN CONTRAST, EXISTS
12 WHEN A DEATH OCCURS WITHOUT MALICE IN THE
13 COMMISSION OF AN UNLAWFUL ACT. NOT AMOUNTING
14 TO A FELONY, OR IN THE COMMISSION OF A LAWFUL
15 ACT WHICH MIGHT PRODUCE DEATH."

16 PEN. CODE, 192 subd. (b).) THE MENTAL STATE
17 REQUIREMENT FOR INVOLUNTARY MANSLAUGHTER
18 IS CRIMINAL NEGLIGENCE. (SEE PEN. CODE, 20

19 PEOPLE.V. WELLS (1996) 12 Cal. 4th 979, 988

20 PEOPLE.V. STUART (1956) 47 Cal. 3d 167, 174

21 PEOPLE.V. COX (2000) 23 Cal. 4th 665, 672

22 PEOPLE.V. BOBO (1990) 229 Cal. App. 3d 1417-1443

23 PEOPLE.V. GLENN (1991) 229 Cal. App. 3d 1461

24 PETITIONER CASE IS SIMILAR TO THIS CASE AND THE
25 SECOND APPELLATE DISTRICT HELD THAT ERROR HAD BEEN
26 COMMITTED WHEN THE TRIAL COURT DECLINED TO INSTRUCT
27 ON INVOLUNTARY MANSLAUGHTER.



1 THE STATE APPELLATE COURT DID ERROR
2 IN REJECTING PETITIONER'S CLAIM OF
3 CUMULATIVE ERROR.


4 Your Honor there are MANY ERRORS here and
5 individually errors. Parle v. Runnels, 505 F.3d
6 922, 927 (9th Cir. 2007) Supreme Court
7 Precedent clearly established that the combined
8 effect of multiple trial court errors violates
9 Due process where it renders the resulting
10 criminal trial fundamentally unfair.

11 CONCLUSION:

12 For the reasons stated, PETITIONER'S
13 Requests that the conviction be reversal
14

15 DATED: Feb, 3, 2008

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17 Respectfully submitted

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20 AN DUY NGUYEN
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